

## **REMARKS**

Applicants acknowledge receipt of the Office Action dated April 20, 2004, in which claims 1, 3-7, 17, 20 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wilson* (US Patent 5,864,827) in view of *Cuomo et al.* (US Patent 6,272,539 B1). Claims 2, 8 and 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wilson* in view of *Cuomo* and further in view of *Grochowski et al.* (US Patent 6,035,389). Claims 18, 19, 21 and 24 were rejected under 35 U.S.C. 103(a) as being upatentable over *Wilson*, *Cuomo* and *Patterson Jr. et al.* (US Patent 5,915,245). Applicants have amended the claims and respectfully traverse the rejections for the reasons set out below.

### **I. THE REJECTION OF CLAIMS 1, 3-7, 17, 20, AND 22**

The Examiner rejects claims 1, 3-7, 17, 20 and 22 as obvious in view of a combination of *Wilson* and *Cuomo*.

Claim 1: Claim 1 recites, in shorthand and as amended, calculating latencies for a first market and a second market based on messages and responses to those messages, then displaying both of those latencies along with the identities of the markets.

The Examiner acknowledges that *Wilson* does not explicitly teach the time when a message is sent, recording for responses received from the recipient of the message the time when each response is received, wherein each response corresponds to a particular message. The Examiner further acknowledges that *Wilson* does not teach calculating for the recipient a latency dependent upon at least one recorded time when at least one message is sent to the recipient and at least one recorded time when a corresponding response is received from the recipient, and displaying the latency for the recipient. OA of 4/20/04 at pp. 2-3.

According to the Examiner, *Cuomo* solves the shortcomings of *Wilson* by teaching the steps of recording the time when each message is sent, recording for responses received from recipient of the first message the time when each response is received, wherein each response corresponds to a particular message. According to the Examiner, *Cuomo* also teaches calculating for at least one recipient a latency dependent upon at least one recorded time when at least one message is sent to the recipient and at least one recorded time when a corresponding response is received from the recipient, and displaying the latency for the recipient. *Id.* at p. 3. For support, the Examiner cites to the *Cuomo* abstract, and *Cuomo* at col. 3, ll. 11-16, 28-34 and col. 3, l. 44 – col. 4, l. 21, as well as claims 1-3. *Id.*

The Examiner suggests that it would have been obvious to combine the teachings of *Wilson* and *Cuomo* because users would have benefited from having information about network delays so that they may make informed decisions about a further course of action. *Id.*

The Applicant respectfully submits that the Examiner is mistaken that a combination of *Wilson* and *Cuomo* would yield the invention of present claim 1. Claim 1 in its original form recited multiple markets. To emphasize this aspect of claim 1, claim 1 has been amended to recite a first market and a second market (although this does not exclude additional markets). Claim 1 has also been amended to recite that a latency is calculated for each of these markets, and that both of these calculated latencies are displayed along with the identity of the markets.

The Examiner relies on *Cuomo* for a teaching of latency. At a minimum, however, *Cuomo* does not teach to display the identity of a market. Nor is there any indication that *Cuomo* would display latencies for two (or more) different markets.

The teachings of *Cuomo* are entirely different from that of the invention of claim 1. *Cuomo* does not address the issue of identifying which markets are likely to execute orders more quickly than others. Although *Cuomo* calculates a delay time characterized by the Examiner as a latency, this latency calculated by *Cuomo* would not correspond to two different markets, as required by amended claim 1. *Cuomo* instead employs "latency" information in order to prevent uneducated users from making uneducated mistakes such as multiple electronic submissions. *See, e.g., Cuomo* at col. 7, lines 17-36. In effect, *Cuomo* teaches a system for congestion control, not a system that would display latencies for at least two different markets. The Applicant respectfully submits that a combination of *Cuomo* and *Wilson* would not include displaying latencies for two different markets, combined with the identity of those markets.

*Wilson* is primarily a translation and recording device, sending a confirmation message to the user only after all the transactions have been completed. It makes no teaching of timing the transactions, either separately or in total. If the teachings of *Cuomo* and *Wilson* were combined, a total transaction request "latency" would be recorded, as taught by *Cuomo*. No recording of individual market latencies would be made or displayed, combined with the identity of the corresponding markets, especially not for two markets as is now recited by claim 1.

## **II. NEW CLAIMS 25-40**

Claim 25 recites a method of selecting a market. Claim 25 notably recites the calculation of two different latencies for two different markets. As explained above, this is not taught or

suggested by *Wilson*, *Cuomo*, or a combination of the two.

Claim 26 recites selecting a first market or a second market based upon which is lower, the first latency or the second latency. This is in contrast to the system taught by *Cuomo* in the sense that the purpose of "latency" in the system of *Cuomo* is in order to let the user be patient while waiting, not in order to select from among plural markets. *Cuomo* does not teach the selection of a market based on which corresponding latency is lower.

Claim 27, dependent from claim 26, recites the display of the first and second latencies, along with the display of the identities for the first and second markets.

Claim 33 recites a method of selecting a port connected to a market. The language of claim 33 corresponds largely to the language of claim 25 but rather than reciting the calculation of latencies for markets, claim 33 recites the calculation of latencies for ports attached to a market.

Claim 34 recites selecting a first port or a second port based upon which is lower, the first latency or the second latency. This is in contrast to the system taught by *Cuomo* in the sense that the purpose of "latency" in the system of *Cuomo* is in order to let the user be patient while waiting, not in order to select from among plural ports. *Cuomo* does not teach the selection of a port based on which corresponding latency is lower.

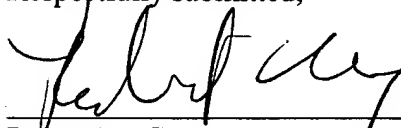
Claim 35, dependent from claim 34, recites the display of the first and second latencies, along with the display of the identities for the first and second ports.

Each of the new claims is believed to be allowable.

**Conclusion**

Applicants believe that they have responded to each ground of rejection and therefore respectfully request that the Examiner reconsider and withdraw the rejections. If the Examiner has any questions or otherwise feels it would be advantageous, he is encouraged to telephone the undersigned at (713)247-0552.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert M. Gray', is written over a horizontal line.

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